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APPENDIX 1

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 04-00723 CA 20

[Filed March 30, 2005]

ANGEL ENRIQUE VILLEDA ALDANA, JORGE AGUSTIN PALMA ROMERO, OSCAR LEONEL GUERRA EVANS, LYIONHEL McINTOSCH RODRIGUEZ, MAREL MARTINEZ, GUMERZINDO LOYO MARTINEZ, and RIGOBERTO AVAYERO HERNANDEZ,	)
Plaintiffs,	)
vs.	)
FRESH DEL MONTE PRODUCE INC., DEL MONTE FRESH PRODUCE COMPANY, and COMPAÑIA DE DESARROLLO BANANERO DE GUATEMALA, S.A. (BANDEGUA),	)
Defendants.	)

ORDER GRANTING MOTION TO DISMISS PURSUANT TO DOCTRINE OF *FORUM NON CONVENIENS*

THIS CAUSE came on before the Court pursuant to notice on February 4, 2005 on Motion to Dismiss Pursuant to Doctrine of *Forum Non Conveniens* of the Defendants, Fresh Del Monte Produce Inc. ("FDMPI"), Del Monte Fresh Produce Company ("DMFPC"), and Compañia de Desarrollo Bananero de Guatemala, S.A. ("Bandegua"). The Court having considered the motion, the responses thereto, all the matters of record filed therewith, having reviewed and considered the file, and having heard argument of counsel, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Defendants' Motion to Dismiss Pursuant to Doctrine of *Forum Non Conveniens* be and the same is hereby **GRANTED**, subject to the conditions set forth in paragraph 3 of this Order.

2. The Court has considered the requisites of Rule 1.061 of the Florida Rules of Civil Procedure and *Kinney System, Inc. v. Continental Insurance* Co., 674 So. 2d 86 (Fla. 1996) and its progeny. In so doing, the Court finds as follows:

a. An adequate alternate forum exists for these Plaintiffs in Guatemala and Guatemala possesses jurisdiction over the entire case, including all of the parties. The Court finds that the testimony submitted by the Defendants' expert, Francisco Chavez Bosque, is more reliable, credible and persuasive than that of the Plaintiffs' expert. The Court finds that the courts of Guatemala are not foreclosed to these Plaintiffs and that the

Guatemalan courts have jurisdiction over these Defendants for the matters alleged in Plaintiffs' Complaint. The Court further finds that the courts of Guatemala are adequate to adjudicate the Plaintiffs' claims.

b. Plaintiffs have raised several issues concerning the adequacy of Guatemalan courts, primarily that the Guatemalan court in the underlying criminal matter which gave rise to this action, after hearing Plaintiffs' testimony at trial found individual defendants guilty but imposed lenient sentences. In essence Plaintiffs ask this Court to look behind whatever judicial determination the Guatemalan judge made in the exercise of his or her individual discretion in sentencing. The fact that a Guatemalan court provided a criminal forum, took testimony and found the defendants guilty in the underlying cause belies Plaintiffs position. The fact that Plaintiff is unhappy with the sentence imposed and asks this court to second guess the reasons for that sentence is to ask this Court to presume what was on the sentencing judge's mind. To do so, with the record presented, would be an act of judicial arrogance.

c. Plaintiffs assert that because this particular motion was litigated before the Honorable Federico A. Moreno, United States District Court Judge in and for the Southern District of Florida and because Judge Moreno denied the Defendants' Motion to Dismiss that this Court is bound by the doctrine of collateral estoppel to also deny the motion. This Court finds Judge Moreno's decision to be persuasive. Judge Moreno found that because United States Department of State granted

Plaintiff herein political asylum as a result of their ordeal which allegedly gave rise to this action and because of their participation in the criminal matter in Guatemala that the Defendant's motion to Dismiss for *Forum Non Conveniens* should be denied. However, thereafter Judge Moreno dismissed the federal case. Therefore, there is no prior final judgment to which both parties are bound. *Prudential Ins. Co. v. Turkal*, 528 So.2d 487 (Fla. 3d DCA). Defendants' now assert that at the time they argued the *Forum Non Conveniens* motion before Judge Moreno they neglected to advise Judge Moreno of the provision of Guatemalan law which allows the Plaintiffs' testimony at trial to be presented by deposition which can be taken outside of the country. Nor, they assert did they advise Judge Moreno that Guatemalan law does not require the presence of parties before the court for a trial. This Court is concerned however about the safety of the Plaintiffs in view of the fact that the United States Department of State has seen fit to grant them political asylum. Therefore, paragraph 3 hereof sets conditions for the granting of this Order.

d. The private interest factors weigh heavily in favor of the Guatemalan forum. The Plaintiffs are all Guatemalan nationals who reside outside of the state of Florida and are, therefore, entitled to little or no deference for their choice of Florida as the forum for the litigation of their claims. Here, the alleged misconduct of which the Plaintiffs complain occurred in Guatemala, the vast majority of the witnesses and documentary evidence are located in Guatemala or in countries close to Guatemala, the vast majority of the documentary evidence is in

Spanish and would have to be translated at great expense to the parties, and the witnesses either do not speak English or Spanish is their native language.

e. Because the private interest factors weigh so heavily in favor of the alternate forum, the Court is not required to consider the public interest factors. Nevertheless, the public interest factors also heavily favor the Guatemalan forum. This dispute, involving as it does one of Guatemala's largest private employers in one of Guatemala's most important economic sectors and one of Guatemala's largest and most influential labor unions, is a quintessentially Guatemalan dispute. Plaintiffs' choice of a Florida forum imposes an inappropriately heavy burden on this Court and this community. Parenthetically, in preparation for this hearing Plaintiffs deposited approximately twenty thousand pages of documents on this Court and asked this Court to read them in order to prepare for the hearing of the Motion to Dismiss Pursuant to Doctrine of *Forum Non Conveniens*. Guatemala, on the other hand, has a paramount interest in this dispute and its courts are more appropriate for adjudicating the Plaintiffs' claims. Furthermore, the fact that Guatemalan law will govern this dispute adds to balance weighing in favor of the Guatemalan forum.

3. For the foregoing reasons, this cause is hereby dismissed pursuant to the doctrine of *forum non conveniens,* without prejudice, to the Plaintiffs re-filing their claims, at their option, in an alternate jurisdiction outside of Florida. The dismissal is subject to the following conditions:

a. the conditions set forth in Rule 1.061(c), Fla.R.Civ.P.; and,

b. the Defendants' agreement, individually and collectively, not to request the deposition or other testimony from any of the Plaintiffs which requires the Plaintiffs to be physically present in Guatemala. If the Defendants, individually or collectively, request the deposition or other testimony of any of the Plaintiffs in a Guatemalan legal proceeding, Plaintiffs must be permitted to give such deposition or testimony through a legal representative of the Plaintiffs or via some other acceptable procedure (e.g., videotaped testimony) whereby the Plaintiffs are not required to be physically present in Guatemala.

c. that should any Plaintiff be required to appear in person as a party or as a witness in Guatemalan by a Guatemalan court related to this claim, this Court will reconsider this ruling. This ruling is predicated upon the understanding that the Guatemalan system of justice and the workings of the courts in Guatemalan are quite different from the American system of jurisprudence. The Court understands that in Guatemala the presiding judge can determine the case based upon documents, affidavit and other pleadings and that the attendance of the parties as parties or as witnesses is not mandated. This Court further understands that the judge in Guatemalan has the option however of requiring a particular witness to appear if he or she desires. Because this Court is concerned

about the safety of the Plaintiffs who have been granted political asylum in this country, this Court would consider a Guatemalan court's requirement that one of the plaintiffs appear in person in any capacity to be a basis of reconsideration of this order.

4. The Court retains jurisdiction of this cause in the event any of the conditions of dismissal are not satisfied.

DONE and ORDERED in Chambers, in Miami, Florida on this day of March 30, 2005.

/s/_____
Ronald C. Dresnick
Circuit Court Judge

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